

FILED

Oct 26, 2022

Disciplinary
Board

Docket # 002

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

GARTH LOUIS DANO,

Lawyer (Bar No. 11226).

Proceeding No.

ODC File No. 22-00888

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Reprimand is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Erica Temple, Respondent's Counsel Stephen Wesley Hayne and Respondent lawyer Garth Louis Dano.

Respondent understands that Respondent is entitled under the ELC to a hearing, to present exhibits and witnesses on Respondent's behalf, and to have a hearing officer determine the facts, misconduct, and sanction in this case. Respondent further understands that Respondent is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an outcome more favorable or less favorable to Respondent. Respondent chooses to resolve this

1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
2 avoid the risk, time, expense, and publicity attendant to further proceedings.

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on October 24,
5 1980.

6 **II. STIPULATED FACTS**

7 2. As of 2019, Respondent was the Grant County Prosecutor.

8 3. Respondent represented the State of Washington in State v. Joseph Mario Zamora,
9 Grant County Superior Court No. 18-1-00263-2.

10 4. In May 2019, Respondent conducted voir dire in Joseph Zamora's (Zamora) jury trial.

11 5. Zamora is Latino and a United States citizen.

12 6. During voir dire, Respondent introduced the topics of border security, illegal
13 immigration, and crimes committed by undocumented immigrants including drug smuggling.
14 Respondent repeatedly elicited potential jurors' comments and views on these topics, referring at
15 one point to "100,000 people" "illegally" crossing the border each month.

16 7. These topics were not relevant to the facts of Zamora's criminal case.

17 8. The statements made by Respondent during voir dire could be viewed by an objective
18 observer as appealing to racial or ethnic bias and stereotypes, and these statements prejudiced
19 Zamora's right to a fair trial.

20 9. Zamora was convicted of two felony counts of third degree assault.

21 10. On December 31, 2021, Respondent resigned as the Grant County Prosecutor.

22 11. In State v. Zamora, 17 Wn.App.2d 1073 (2022), the Court of Appeals affirmed the
23 convictions, holding that because Zamora's lawyer had not objected to Respondent's questions

1 in voir dire, Zamora was unable to demonstrate that the prosecutor's conduct caused prejudice
2 that could not have been neutralized by a curative instruction to the jury.

3 12. Zamora appealed this decision.

4 13. In State v. Zamora, 199 Wn.2d 698, 512 P.3d 512 (2022), the Supreme Court held that
5 Respondent committed race-based prosecutorial misconduct by appealing to racial and ethnic bias
6 and stereotypes during jury selection.

7 14. The Supreme Court found that Respondent acted "apparently intentionally,"
8 referencing the legal standard set forth in State v. Monday, 171 Wn.2d 667, 680, 257 P.3d 551
9 (2011). The Supreme Court explained that this standard is an objective one and does not consider
10 the prosecutor's subjective intent.

11 15. The Court held that the resulting prejudice to Zamora is incurable and reversed and
12 vacated Zamora's convictions.

13 16. Respondent acknowledges that Respondent's comments during voir dire appeared to
14 be intentional appeals to racial and ethnic bias and stereotypes.

15 17. However, it was not Respondent's subjective intent to appeal to such prejudice and
16 stereotypes; Respondent acted negligently in doing so.

17 18. In Respondent's initial response to this disciplinary matter, Respondent acknowledged
18 the impropriety of Respondent's conduct during voir dire as well as the serious harm resulting
19 from this conduct. Respondent has expressed great remorse for Respondent's actions. Exhibit A
20 (attached) contains Respondent's initial response to the grievance with Respondent's explanation.

21 III. STIPULATION TO MISCONDUCT

22 19. In representing the State, Respondent engaged in conduct that was a discriminatory
23 act prohibited by state law, prejudicial to the administration of justice, and that a reasonable

1 person would interpret as manifesting prejudice or bias on the basis of race and national origin.
2 Respondent violated RPC 8.4(g) (through a violation of the Wash. Const. Art. I, § 3 and § 22),
3 RPC 8.4(d), and RPC 8.4(h).

4 IV. PRIOR DISCIPLINE

5 20. Respondent has no prior discipline.

6 V. APPLICATION OF ABA STANDARDS

7 21. The following American Bar Association Standards for Imposing Lawyer Sanctions
8 (1991 ed. & Feb. 1992 Supp.) apply to this case:

9 *6.2 Abuse of the Legal Process*

- 10 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court
11 order or rule with the intent to obtain a benefit for the lawyer or another, and causes
12 serious injury or potentially serious injury to a party or causes serious or
13 potentially serious interference with a legal proceeding.
- 14 6.22 Suspension is generally appropriate when a lawyer knows that he or she is
15 violating a court order or rule, and causes injury or potential injury to a client or a
16 party, or causes interference or potential interference with a legal proceeding.
- 17 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with
18 a court order or rule, and causes injury or potential injury to a client or other party,
19 or causes interference or potential interference with a legal proceeding.
- 20 6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance
21 of negligence in complying with a court order or rule, and causes little or no actual
22 or potential injury to a party, or causes little or no actual or potential interference
23 with a legal proceeding.

18 *7.0 Violations of Duties Owed as a Professional*

- 19 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct
20 that is a violation of a duty owed as a professional with the intent to obtain a benefit
21 for the lawyer or another, and causes serious or potentially serious injury to a
22 client, the public, or the legal system.
- 23 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct
24 that is a violation of a duty owed as a professional and causes injury or potential
injury to a client, the public, or the legal system.
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct
that is a violation of a duty owed as a professional and causes injury or potential
injury to a client, the public, or the legal system.
- 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance

1 of negligence that is a violation of a duty owed as a professional, and causes little
2 or no actual or potential injury to a client, the public, or the legal system.

3 22. Respondent's subjective mental state is relevant to determining the presumptive
4 sanction under the ABA Standards.

5 23. Respondent acted negligently in conducting a voir dire that caused interference in a
6 legal proceeding. Respondent's actions were a violation of a duty owed as a professional.

7 24. Respondent's actions caused injury to Zamora and the public's perception of the
8 criminal justice system, and interference with a legal proceeding,

9 25. The presumptive sanction is reprimand.

10 26. The following aggravating factor applies under ABA Standard 9.22:

11 (i) substantial experience in the practice of law.

12 27. The following mitigating factors apply under ABA Standard 9.32:

- 13 (a) absence of a prior disciplinary record;
14 (g) character or reputation; and,
15 (l) remorse.

16 28. It is an additional mitigating factor that Respondent has agreed to resolve this matter
17 at an early stage of the proceedings.

18 29. On balance the aggravating and mitigating factors do not require a departure from the
19 presumptive sanction.

20 VI. STIPULATED DISCIPLINE

21 30. The parties stipulate that Respondent shall receive a reprimand.

22 VII. CONDITIONS OF PROBATION

23 31. Respondent will be subject to probation for a period of 90 days beginning when this
24 stipulation receives final approval and shall comply with the specific probation terms set forth
below.

1 32. Respondent shall attend at least three hours of continuing legal education classes
2 related to the topics of diversity, equity and inclusion. This shall be completed within 90 days of
3 when this stipulation receives final approval.

4 33. Failure to comply with this condition of probation may be grounds for further
5 disciplinary action under ELC 13.8(b).

6 **VIII. RESTITUTION**

7 34. An order of restitution is not appropriate.

8 **IX. COSTS AND EXPENSES**

9 35. In light of Respondent's willingness to resolve this matter by stipulation at an early
10 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
11 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(j) if
12 these costs are not paid within 30 days of approval of this stipulation.

13 **X. VOLUNTARY AGREEMENT**

14 36. Respondent states that prior to entering into this Stipulation, Respondent has consulted
15 independent legal counsel regarding this Stipulation, that Respondent is entering into this
16 Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association,
17 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
18 as provided herein.

19 37. Once fully executed, this Stipulation is a contract governed by the legal principles
20 applicable to contracts, and may not be unilaterally revoked or modified by either party.

21 **XI. LIMITATIONS**

22 38. This Stipulation is a compromise agreement intended to resolve this matter in
23 accordance with the purposes of lawyer discipline while avoiding further proceedings and the

1 expenditure of additional resources by the Respondent and ODC. Both the Respondent and ODC
2 acknowledge that the result after further proceedings in this matter might differ from the result
3 agreed to herein.

4 39. This Stipulation is not binding upon ODC or the Respondent as a statement of all
5 existing facts relating to the professional conduct of the Respondent, and any additional existing
6 facts may be proven in any subsequent disciplinary proceedings.

7 40. This Stipulation results from the consideration of various factors by both parties,
8 including the benefits to both by promptly resolving this matter without the time and expense of
9 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
10 such, approval of this Stipulation will not constitute precedent in determining the appropriate
11 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
12 subsequent proceedings against Respondent to the same extent as any other approved Stipulation.

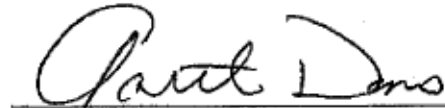
13 41. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
14 the Hearing Officer's review become public information on approval of the Stipulation by the
15 Hearing Officer, unless disclosure is restricted by order or rule of law.

16 42. If this Stipulation is approved by the Hearing Officer, it will be followed by the
17 disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement
18 of Lawyer Conduct will be made.

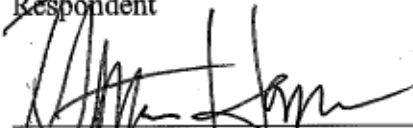
19 43. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have no
20 force or effect, and neither it nor the fact of its execution will be admissible as evidence in the
21 pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or
22 criminal action.

1 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to


2 Reprimand as set forth above.

3 
4 Garth Louis Dano, Bar No. 11226
5 Respondent

Dated: 10/21/22

6 
7 Stephen Wesley Hayne, Bar No. 5995
8 Counsel for Respondent

Dated: 10/21/2022

9 
10 Erica Temple, Bar No. 28458
11 Senior Disciplinary Counsel

Dated: 10/24/22

EXHIBIT A

Garth Dano Lawyer, P.S.

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September 5, 2022

Ms. Erica Temple
Washington State Bar Association
Office of Disciplinary Counsel
1325 4th Avenue
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Seattle, WA 98101

Dear Ms. Temple and the Washington State Bar Disciplinary Board,

I appreciate being allowed additional time to respond to Ms. Culwell's grievance. By way of reply, I offer the following for the Board's consideration.

First, I would like to make it clear that upon reading the Supreme Court's opinion in State v. Zamora, I can fully appreciate the Court's and WSBA's concerns regarding my actions in the case. Over my 42 year career as a lawyer, I have been proud to hold myself to the highest standards of integrity and ethics demanded of our profession. Coming to grips with the reality that I let my profession down, failed the citizens of Grant County, did harm to my reputation, and most critically, impacted Mr. Zamora's fundamental right to a fair trial has been an exceedingly painful process. It was a mistake in judgment that I deeply regret and am committed to learning from and never repeating.

I ask the Bar to consider that I have tried over 100 jury trials, civil and criminal, as a prosecutor and defense lawyer, without any accusations of the nature in Mr. Zamora's case. My initial response was to defend myself against what felt like an unjustified attack, to assert my sincere belief that that I did not intend to prejudice the jury against Mr. Zamora on the basis of his race or ethnicity.

The case against Mr. Zamora involved a violent confrontation with police and accusations of illegal drug use, subjects of intense media scrutiny and divisive opinions across the country and in Grant County. Initially, I felt my questioning was appropriate given the seemingly constant local and national media's coverage of police violence against racial minorities, illegal

Ms. Temple
September 5, 2022

immigration, the border wall, increased drug trafficking, and the fears of many local citizens, justified or not, that criminals were breaching our southern border. In Grant County these issues were strongly debated and gave rise to serious concerns on both sides of potential juror bias.

All trial lawyers struggle with getting jurors to openly discuss subjects which might expose closely guarded bias, knowledge that is critical to the intelligent exercise of challenges. It is extremely complicated, if not impossible, in the short time allowed by the Courts for questioning by the attorneys, which literally allows one minute per juror in a 60 person panel. Experience has shown a direct approach is simply necessary in an attempt to ferret out actual bias in 60 complete strangers.

Having made these points, it is not lost on me that my attempts to uncover jurors' unconscious bias ironically revealed my own. In retrospect, I now see how my questions and comments appeared disturbing to others. Through a painful process of self-examination, I realize how my conduct—regardless of my actual intentions—impacted Mr. Zamora's rights to an impartial jury, to due process, and to a fair trial.

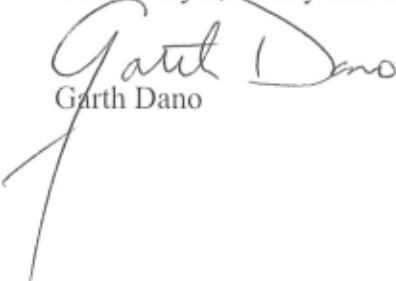
It has been very difficult to look in the mirror, to work through the overwhelming desire to defend myself and to consider my conduct from an outsider's objective point of view. In doing so, I appreciate that comments I felt were made in good faith and in the legitimate exercise of my responsibilities as a prosecutor, can be reasonably viewed as "racist" and repugnant to our system of justice.

Mr. Zamora and all persons charged with a crime deserve a prosecutor committed to these principles above all else. As painful as it has been, I realize my conduct was not in accord with the high standards imposed on myself and all prosecutors. My failure to recognize my error at the time did harm to myself, to my fellow prosecutors, to our profession, to the citizens whom I served, and most importantly, to Mr. Zamora and his right to be judged entirely and only on the facts and law, period.

I will end with the assurance that this mistake will live in me for the rest of my career and the rest of my life as a painful lesson in humility and personal and professional growth.

I intend to fully cooperate in the Bar's investigation of this matter and look forward to the opportunity to provide additional details I feel are critical to a complete understanding of my actions in this matter.

Yours very sincerely and respectfully,


Garth Dano